

No. 129890

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

K.P.,
on behalf of B.S., a minor child,

Plaintiff/Appellee,

v.

UNIFIED SCHOOL DISTRICT NO. 394,

Defendant/Appellant.

BRIEF OF APPELLEE

District Court of Butler County
Hon. Chad M. Crum, Judge
District Court Case No. BU-2023-CV-000212

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NATURE OF THE CASE

This case is the kidnapping of a five-year old boy. Appellant was warned, ignored the warning, and allowed a kidnapper to walk into the school and take the child from a daycare. It now posits that because no physical injury occurred, its wanton conduct should go unpunished, even in light of the extensive emotional damage exacted by this event.

Appellant originally claimed that the physical injury rule only barred negligent conduct unless it was willful or wanton, a position aligned with extensive caselaw. Unfortunately for Appellant, the District Court felt that a reasonable factfinder could determine wanton conduct. Appellant evolved. It filed a Motion to Reconsider on October 8, 2025, asserting that no claim for negligence without a physical injury is allowed. The District Court once again correctly denied Appellant's motion. Appellant then requested an interlocutory appeal. This appeal follows.

FACTUAL AND PROCEDURAL BACKGROUND

The following facts are taken from the Plaintiff's Response to Appellant's Motion for Summary Judgment:

B.S. was placed in Police Protective Custody (PPC) at 11:53 p.m. on November 2, 2021, by Officer E. Brown, WPD #2642, under case number 21C068101, due to his parents arrest/ jail. At the time he was five years of age. At the time, B.S. resided with his Mother, D.B. and Father, Z.S., in Wichita, Kansas.

On November 2, 2021, Officers were dispatched to a welfare check at 177 West Lincoln in Wichita where B.S. resided with his natural parents. It was reported that DCF

had been attempting to contact parents and when they couldn't, they requested a welfare check on the child.

Upon arrival at the residence, Officers observed narcotics and drug paraphernalia in the home. Both parents were arrested and taken to jail. Z.S. was arrested and booked under charges of Aggravated Endangering a Child, Use or Possess with Intent to Use Drug Paraphernalia to Cultivate Controlled Substance, Possession of Controlled Substance and Criminal Carrying of Weapon.

D.B. was arrested and booked under charges of Aggravated Endangering a Child, Use or Possess with Intent to Use Drug Paraphernalia to Cultivate Controlled Substance and Possession of Controlled Substance. B.S. was placed in PPC and transported to the Wichita Children's Home.

This was not B.S.'s first trip to the Wichita Children's Home. He was previously at WCH on September 9, 2016 due to being declared a drug addicted/drug affected child. DCF accepted an intake which was assigned to Child Protection Specialist (CPS) Chad Stewart, MSW.

At the time, D.B. had a criminal history for Battery; Physical Contact in Rude, Insulting, Angry Manner under case number 17CR3518. Z.S. had failed to pay fines in the amount of \$40,882.56 and had a criminal history for three (3) counts of Battery; Bodily Harm to Another under case number 17CR3517 and Buttery; Causing Bodily Harm under case number 13CR3433. Z.S. had convictions for various traffic offenses to which his license had been suspended.

DCF filed a Child in Need of Care on November 4, 2021.

According to the Petition, there were concerns about the parents being under the influence of substances when coming to the Pre-K to pick up B.S..

According to the motion seeking to terminate parental rights, Z.S. submitted a hair follicle test on November 5, 2021, which tested positive for cocaine. Bio-dad's hair follicle test was positive for amphetamine, meth, cocaine and THC. Bio-mom's hair test was positive for amphetamine, meth, and cocaine. The parents' UAs were positive for amphetamine, meth, nodiazepam, oxazepam and temazepam.

On December 21, 2021, B.S. was adjudicated a CINC and placed in the custody of DCF.

The biological parents failed to comply with hair tests requested on January 5, 2022. They did complete UAs and both were positive for amphetamine, methamphetamine, cocaine, and marijuana.

On March 10, 2022, D.B. submitted a hair test that was positive for amphetamine, methamphetamine, and cocaine. Z.S.'s hair test was positive for cocaine. The sample was insufficient to test for amphetamine and cocaine. Z.S.'s UA was positive for amphetamine and methamphetamine. His sample was noted to have a high creatinine level outside of the expected values. The results of D.B.'s UA on March 10, 2022, were not reported.

Additionally, the parents failed to comply with drug tests requested on January 17, 2022; February 9, 2022; February 16, 2022; February 22, 2022; and March 1, 2022.

On April 6, 2022, under case number 22S003049, both parents were arrested after a traffic stop. Mother was driving while her license was suspended. Father was in

the vehicle. Officers observed a methamphetamine pipe on the floor board. A further search of the vehicle, officers located ten (10) grams of marijuana, fifty-nine (59) MDMA pills; seven (7) dosage units of marijuana pills; three (3) grams of methamphetamine, two (2) Percocet Thirty pills, a Luger 9mm handgun, brass knuckles, as well as other drug paraphernalia and drug items.

On April 7, 2022, the CINC case came on for a review hearing. Father appeared; Mother did not. The Court ordered B.S. to remain in the custody of DCF until further written notice of the court.

On May 7, 2022, under case number 22C027304, Father was suspected of possession of an illegal weapon and shoplifting.

In the “days/weeks leading up to the event” Z.S. and D.B. had made 4-7 failed attempts to purchase firearms.

Within two weeks of the kidnapping, Z.S. and D.B. had threatened to kill K.P. and her husband and take B.S..

K.P. is now the adoptive mother of B.S.. The following information is taken from her affidavit and is based upon her recollections and texts contemporaneous with the facts as she describes them.

“Following is a chronology of my contacts with Kyla Beavers, USD 394's Director of Early Childhood Operations:

“November 21, 2021: Over the weekend [Z.S.] and [D.B.] text me via Facebook Messenger and told me they were coming over to see B.S. no matter what the social worker said, they stated the social worker would not stop them. I informed Kyla Beavers about this incident when I picked B.S. up from Kids Klub.

January 10, 2022: [Z.S.] and [D.B.] continue to call and text telling me they are coming over to see B.S. against the orders from the social workers. They showed up at the end of our driveway in a rented Uhaul white truck and drop off an old broken plastic 4 wheeler toy. I went outside and told them to leave immediately, or I would call the cops. I shared this information with Kyla the next day.

January-April, 2022: [Z.S.] and [D.B.] miss Thursday 9:00 am visitations off and on, the school knows this information because he is picked up and returned to school during this time, he also was very emotional and the school was informed when the bio parents showed up or did not during these times.

April 7, 2022: [Z.S.] and [D.B.] did not show up for visitation, we looked up their jail record and found out they had no tags, no insurance, and drugs in their vehicle and was in jail during this week's visit. I informed Kyla of this information.

April 15, 2022: [Z.S.] is supposed to go to rehab, our mother was supposed to take him. He ignored the social workers and our family and refused to go to treatment. Kyla was informed by myself.

April 21, 2022: [Z.S.] and [D.B.] are caught robbing/stealing from a Pawnshop their pictures are posted all over Facebook. I spoke with Kyla about this incident and showed her the picture. (See picture below.)

May 11, 2022: Hillary and Braedon (B.S.'s social workers) inform us there will be no more visitation and 0 contact with [Z.S.] and [D.B.] going forward. This information was immediately shared with the school.

According to K.P.'s affidavit, "Kyla and I saw each other at least once a day, sometimes twice a day during B.S.'s time at Kids Klub (during drop off and pick up times (6:20am and around 4:15pm). Almost all of our communications were verbal. We had to communicate and work together to understand what [B.S.] was going through,

his emotions, and how to help him. Kyla knew beyond any question how dangerous the natural parents were and she knew that shortly before the kidnapping, Zach had threatened to kill me.”

According to her affidavit, “I worked closely with the school (office personnel, principal, counselors, and teacher) to make sure we were all in contact and all on the same page with B.S.’s situation with his bio parents.

Also according to her affidavit, “The school knew what was going on due to the nature of his natural parent visitation being in the middle of the school day. The visitations were at the St. Francis offices 9:00 am every Thursday. The school was informed ahead of time of the visitation schedule. The school was also informed when we picked B.S. up from school and signed him out, then again when we dropped him off at the school after visitation. The school would be notified by myself or Amy Banzet of how the visit went, so on his arrival back at the school the counselors could assist B.S. with transitioning back into class after visitation.

The bio-parents were held on the following: Kidnapping, Transporting a loaded firearm, Convicted felon carrying or possessing a firearm, Using firearm or other offensive weapon while committing or attempting to commit a felony, Knowingly or intentionally possessing a controlled dangerous substance, Delivering, possessing or manufacturing drug paraphernalia knowing it will be used to plant into the human body a controlled dangerous substance, Knowingly receiving any property that was stolen, embezzled, obtained by false pretense or robbery, or concealing, withholding such property and Failing to use child passenger restraint system.

ARGUMENT AND AUTHORITIES

Appellee concurs with Appellant's position on the standard of review. This issue should be reviewed using a *de novo* standard.

Plaintiff has successfully stated a claim for negligence.

Appellant is completely aware of the law on this issue. On July 25, 2025, *the* Appellant specifically assured the District Court that the “physical injury rule is inapplicable where the injurious conduct is willful or wanton, or the defendant acts with intent to injure.” *Majors v. Hillebrand*, 51 Kan. App. 2d 625, 633, 349 P.3d 1283 (2015); *Hoard v. Shawnee Mission Medical Center*, 233 Kan. 267, 662 P.2d 1214 (1983). Ten months later, the Defendant now can't get away fast enough from its statement to the Court concerning Appellant's clear statement of Kansas law. The Appellant now argues that there is no such thing as wanton negligence. Someone should alert the Kansas legislature, the Kansas Supreme Court and this Court, that wanton negligence no longer exists. For instance, under the Kansas Tort Claims Act, K.S.A. 75-6104, the following claim is an exception from immunity:

(15) any claim for injuries resulting from the use of any public property intended or permitted to be used as a park, playground or open area for recreational purposes, unless:

(A) The governmental entity or an employee thereof ***is guilty of gross and wanton negligence*** proximately causing such injury;

The following Kansas Appellate Court decisions recognize that gross and wanton negligence is still alive and well in this jurisdiction: *Soto v. City of Bonner Springs*, 291 Kan. 73, 82, 238 P.3d 278 (2010); *Adamson v. Bicknell*, 295 Kan. 879, 890, 287 P.3d 274 (2012); *Post v. Hanchett*, No. 21-2587-DDC, (D. Kan. Jan. 4, 2024); *Winters v. State*, 512 P.3d 233 (Kan. Ct. App. 2022) (Unpublished); *Muxlow v. City of Topeka*, 420

P.3d 503 (Kan. Ct. App. 2018) (Unpublished); *Wagner v. Live Nation Motor Sports, Inc.*, 586 F.3d 1237, 1244 (10th Cir. 2009); *Reeves v. Carlson*, 266 Kan. 310, 969 P.2d 252 (1998); *Gruhin v. Overland Park*, 17 Kan. App. 2d 388, 836 P.2d 1222 (1992); *Bowman v. Doherty*, 235 Kan. 870, 876, 686 P.2d 112 (1984); *Anderson v. White*, 499 P.2d 1056, 1058 (Kan. 1972); *Johnson v. Huskey*, 186 Kan. 282, 350 P.2d 14 (1960);

With all due respect to our federal judiciary, there is no question that the Kansas Courts have long recognized wanton negligence and continue to do so.

Until October 8, 2025, Appellant's clear and unambiguous position on this issue in its Motion for Summary Judgment was that no willful or wanton conduct had occurred or been pled, stating that:

[t]he 'physical injury rule is inapplicable where the injurious conduct is willful or wanton, or the defendant acts with intent to injure.' *Majors*, 51 Kan. App. 2d at 633. But Plaintiff does not allege in the Pretrial Order that Defendant's actions were willful or wanton."

R. Vol. 1, p. 141.

It is only once Appellant realized that such conduct had been pled that it takes its current position -- that the Kansas Supreme Court was mistaken and that no such exception exists.

Appellant's argument states that "[a]s recognized by the Kansas Supreme Court, 'Kansas does not recognize degrees of negligence and, thus has no category for "gross negligence."'" Nevertheless, Appellant begrudgingly includes the rest of the quote later in the paragraph, acknowledging that there is a "distinction between ordinary negligence and wanton conduct." This acknowledgement correctly states the law, that there is ordinary negligence, and negligence involving wanton conduct.

The Appellant does not need to travel to Federal Court to find the law of this case. It has *long* been the law of this state that the physical injury rule is inapplicable where the injurious conduct is willful or wanton. As early as 1909, the Supreme Court noted an exception for the physical injury rule: “There are well-recognized exceptions to the general rule making a contemporaneous bodily injury essential to a recovery of damages first arising in cases of assault, illegal arrest, malicious prosecution, false imprisonment, and seduction.” *Lonergan v. Small*, 81 Kan. 48, 51 (1909). The rule has been affirmed in *Hoard v. Shawnee Mission Medical Center*, 233 Kan. 267, 274, 662 P.2d 1214 (1983); (“This physical injury rule is inapplicable where the injurious conduct is willful or wanton, or the defendant acts with intent to injure.”) and noted by the Kansas Court of Appeals in 2015 in *Majors v. Hillebrand*, 51 Kan. App. 2d 625, 628, 349 P.3d 1283 (2015) (This physical injury rule is inapplicable where the injurious conduct is willful or wanton, or the defendant acts with intent to injure.”)

Appellant cites a number of cases which do not, upon closer investigation, reinforce its argument. It relies most heavily on *Curts v. Dillard's, Inc.*, 30 Kan. App. 2d 814, 815, 48 P.3d 681 (2002). At first glance, Appellant appears to cite two pages of the case. At second glance, it appears the entire decision is two pages. The *Curts* case is a short affirmation of a District Court ruling. It addressed the issue of negligent infliction of emotional distress. Furthermore, it likens that claim to the tort of outrage as Appellant indicates. Fatally, however, Appellant ignores one simple, incredibly important fact, **the tort of outrage had already been pled and dismissed. *Id.*** Appellant tries this same approach again in citing *Anspach v. Tomkins Industries, Inc.*, 817 F. Supp. 1499 (D. Kan. 1993), *aff'd* 51 F.3d 285 (10th Cir. 1995). Aside from citing a

federal case, the plaintiffs in *Anspach* had already pled a claim for intentional infliction of emotional distress.

Finally, Appellant cites a throw-away paragraph of dicta at the end of *Estate of Randolph v. City of Wichita*, 57 Kan. App. 2d 686, 720, 459 P.3d 802, *rev. denied*, 312 Kan. 891 (2020). The Kansas Court of Appeals had already determined that the plaintiffs in *Randolph* had failed to state an actionable claim for negligent infliction of emotional distress, as they had failed to meet the appropriate factual standard. The Court's further discussion after the fact does not rewrite the Kansas Supreme Court's opinions in *Hoard*, nor the Kansas Court of Appeals' decision in *Majors*.

There is no confusion in the appellate courts of this state or the Kansas Legislature as to wanton negligence. The confusion is an invention of the Appellant. Wanton negligence and outrage are two separate legally cognizable claims.

Appellant's entire argument relies on the premise that wanton negligence as outlined in *Hoard* and *Majors* is equivalent to the tort of outrage or intentional infliction of emotional distress. After all, each case cited by Appellant also involved a claim of outrage. These two claims are separate. "In its simplest form, a negligence claim requires a plaintiff to prove four essential elements: (1) defendant owed a duty to the plaintiff; (2) defendant breached that duty; (3) plaintiff's injuries were caused by the defendant's breach; and (4) plaintiff suffered damages." *Reardon v. King*, 310 Kan. 897, 903, 452 P.3d 849 (2019) citing *Patterson v. Cowley County, Kansas*, 307 Kan. 616, 622, 413 P.3d 432 (2018). The requirements for a claim of outrage go far beyond. "A claim for the intentional infliction of emotional distress or the tort of outrage requires: (1) the defendant act intentionally or in reckless disregard of the plaintiff; (2) the actions

must be ‘extreme and outrageous’; (3) the plaintiff has to experience ‘extreme and severe’ mental distress; and (4) the plaintiff's mental distress has to be causally connected to the defendant's actions.” *Est. of Randolph* 57 Kan. App. 2d at 718 citing *Valadez v. Emmis Communs.*, 290 Kan. 472, Syl. ¶ 1, 229 P.3d 389 (2010). There is no requirement under negligence that requires either “extreme and outrageous” actions or “extreme and severe” emotional distress. Both of these additional requirements serve to clearly and effectively separate the tort of outrage from any claim for wanton negligence. The only confusion in this suit lies in a couple of statements of short dicta. The long-standing holdings of the Kansas Supreme Court must control.

Finally, as the Appellant points out, the physical injury rule is not a consideration when dealing with the tort of outrage. This flawed idea that the Kansas Supreme Court’s decision in *Hoard* is really a restatement, that the proper method for asserting a wanton negligence claim is through the tort of outrage, is, frankly, outrageous. If this Court looks to the decision in *Hoard* it will notice several factors which must lead it to believe that the physical injury rule is inapplicable.

The Court in *Hoard* addresses two separate claims. First, it addresses a claim for negligent infliction of emotional distress. Second, it addresses the tort of outrage. The Kansas Supreme Court continuously addresses these two torts separately, and discusses the physical injury rule as it relates to only the negligence claim. *Hoard* 233 Kan. at 274. The Court even discusses the physical injury doctrine and negligence in contrast to the further conduct necessary for the tort of outrage. The wanton conduct exception to the physical injury doctrine allows a claim for negligence. Any other reading of *Hoard* ignores the text of the court’s decision.

CONCLUSION

The Kansas Supreme Court has been clear: the physical injury doctrine of negligence does not apply in situations involving willful or wanton conduct. This case involves wanton conduct, a knowing disregard for danger B.S. faced. Appellant's argument that such a claim is improper flies in the face of precedent. With this in mind, this Court should affirm the District Court's denial of Summary Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June, 2026, the above and foregoing was
filed with via Kansas Courts E-Flex and notice sent to:

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